

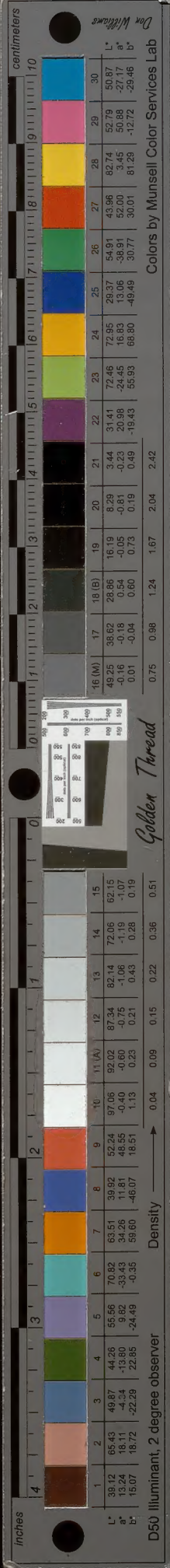
John Marshall

Legacy to the Marshall to Philadelphia Library

*Answer of
H. J. Williams Esq*

Supreme Court

12492.F.366





2/cent
Parrish
from H. J. Parrish
Chester Hill

Mr. John M. Allister
No 14 Nth Market St
Philadelphia

SUPREME COURT.

IN EQUITY.

JULY TERM, 1871. No. 1.

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

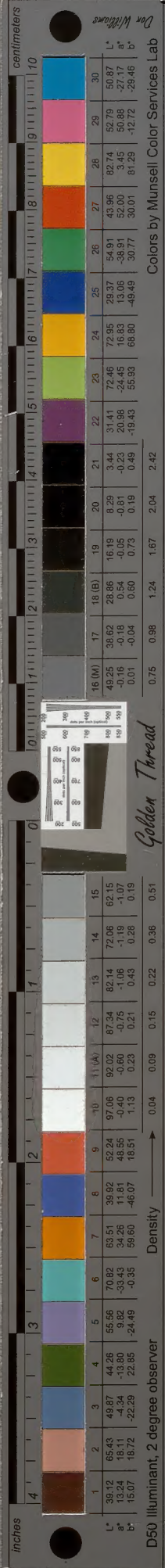
HENRY J. WILLIAMS.

The Answer of Henry J. Williams, Executor of the Last Will and Testament of James Rush, M.D., to the Bill of Complaint of The Library Company of Philadelphia.

1. James Rush, M.D., of the city of Philadelphia, died on the 26th day of May, 1869, leaving a last Will and Codicils from which extracts have been made in the bill filed. A copy marked "A," hereto annexed, it is prayed, may be taken as a part of this, my answer.

He died seized and possessed of valuable real and personal property, inventoried and appraised, as charged in the bill, at \$1,110,717.

He devised and bequeathed his whole estate to me, his executor (Will, p. 3), in trust, after payment during the respective lives of the beneficiaries, of annuities amounting to about \$8100, to expend the residue in the purchase of a "lot of ground not less than one hundred and fifty feet square, situate between Fourth and Fifteenth, and Spruce and Race Streets in the city of Philadelphia" (Will, p. 4), and in the erection thereon "of a fire-proof building sufficiently large to "accommodate and contain all the books of the Library Company of Philadelphia, and to provide for its future extension "according to plans, directions and specifications which I shall "hereafter make or give; but if I should not make or leave



"any such plans, directions or specifications, then to erect
 "the same according to his best judgment, and to the views
 "which I have expressed to him." One of his objects in
 thus giving his residuary estate was, as he said:—

"To express my respect and regard for my father-in-law,
 "the late Jacob Ridgway, and my affection for, and gratitude
 "to his daughter, Phoebe Ann Rush, by erecting to their mem-
 "ories a monument which I hope will prove more durable
 "than any other grateful record I could make." (Will, p. 11.)

By a codicil he provided for the purchase of a larger lot,
 and an indefinite extension of the area for selection:—

"I authorize and allow my executor, under a broad and
 "thoughtful foresight, to increase the size of the lot and select
 "any situation he may deem most expedient, without regard
 "to any provision of my will or codicils." (Will, p. 26.)

Though in the *first* codicil to his will he had said: "I
 "wish (Will, p. 15) that the greater part of my estate may
 "be spent in completing the new library building. The an-
 "nuities as they expire and fall into my residuary estate will
 "be amply sufficient for all the legitimate purposes of a library,"
 yet he was so desirous that the Library Company should not be
 put into the possession of "an income greater than is required
 "to provide for the legitimate (not a competing) increase
 "of the library and their current expenses (not to be so
 "large as to invite extravagance and waste), for which pur-
 "poses the sum to be set apart to secure the legacies and
 "annuities given by my said will and testament will be suffi-
 "cient" (Will, p. 23-24), that for the third time, in the second
 codicil, after announcing those views and reciting that he had
 theretofore given and devised the greater portion of his es-
 tate to his executor "for the purpose of erecting for the
 "Library Company of Philadelphia a building not only large
 "enough to contain their present books, but also their proba-
 "ble increase for many years to come" (Will, p. 24); he
 further provided as follows:—

"I hereby authorize and direct my said executor to expend
 "the whole remainder of my estate in the purchase of a lot and
 "the erection of the library building, construction of book-

"cases, &c., leaving the said company only an income sufficient to defray the ordinary and strictly appropriate expenses of such an institution." (Will, p. 24.)

He directed that "so soon as this building was completed and ready for occupation," I, his executor (Will, p. 5), should convey it, with the lot of ground whereon it was erected, unto "The Library Company, of Philadelphia," for the uses and purposes of their library, and for no other use and purpose whatever. Provided, however, that before any such conveyance should be made to the said Library Company they should, either by an alteration in their charter, or in some other way satisfactory to his executor, bind themselves to conform to and comply with certain express conditions in the Will and Codicils enumerated, viz:—

In the Will:—

A. Lectures, &c., must not be delivered, nor any museum, gallery, &c., formed within the building. (Will, p. 5.)

B. The keeping of a separate account of the receipts and expenditures of the "Ridgway Branch." (Will, p. 6.)

In the Codicil:—

A. The maintaining, in one of the interior rooms, a marble slab, with a certain inscription, as a testimonial to his wife and her father, which slab is to be placed there by myself. (Codicil, p. 11.)

B. An insertion in an act of Assembly which will be required, as he said, to carry out the provisions of his Will and Codicils, clauses imposing (Codicil, p. 11)—

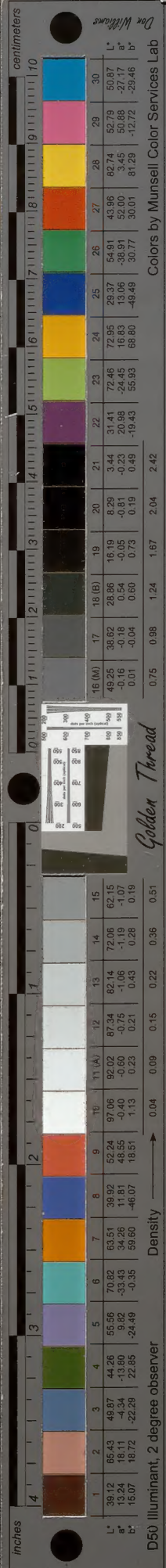
a. A limitation as to the number of members of the board to be taken from the learned professions.

b. A bar upon the further issue of shares of stock. (Codicil, p. 12.)

c. A bar upon any connection with any other corporation. (Codicil, p. 12.)

C. Refreshments not to be paid for out of the funds received from him. (Codicil, p. 12.)

D. No work to be excluded from the Library on account of its difference from the ordinary or conventional opinions, &c. (Codicil, p. 13.)



E. The safe keeping of his pictures, library, &c., in one of the rooms of the new building. (Codicil, p. 14.)

He also directed, that after this building had been finished, and all the preliminary conditions complied with, the residue of his estate should be conveyed to the said Company upon the trusts in his Will and Codicils set out. (Will, p. 6.)

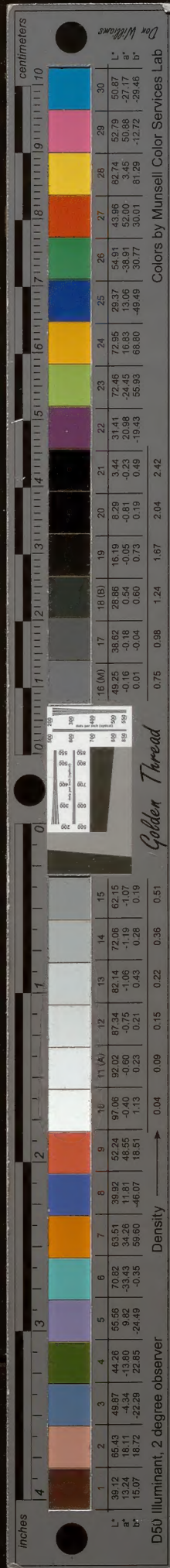
He further provided:—

"If the Philadelphia Library Company should omit or decline to accept my residuary estate on the terms and conditions in my Will and Codicils contained, or fail to comply with any of the preliminary stipulations and directions therein mentioned, then I give and devise the whole residue of my estate, real and personal, whatsoever and wheresoever the same may be, after paying and securing all legacies, &c., * * * unto Henry J. Williams, my executor, in my said last Will named, his heirs, executors, and administrators, in trust, therewith to found and endow a public library entirely distinct from, and independent of, the Philadelphia Library Company, to be named and called the Ridgway Library." (Codicil, p. 14-15.)

This Will was proved on the 31st May, 1869, on which day I took an oath to perform my duties as executor in accordance with law. I have, from the outset, acted under advice of counsel. Until his appointment to the Bench of the Supreme Court of the United States, the Hon. William Strong was one of my legal advisers. I have never, since assuming the executorship, in act or thought, done anything contrary to what I believed to be my legal duty, as such executor, and I have taken no important step without first obtaining the advice and approbation of my counsel.

The testator knew that the Library Company had, for very many years, been striving to secure funds sufficient to erect a fire-proof building large enough to contain all their books, and their probable increase, and his provision that such a building should be erected in accordance with his views, was, with him, a favorite and constant matter of thought.

He made many inquiries for eligible lots and as to proper places for building. He ascertained that the lot which, in 1860, he had thought sufficient would be too small, and that there would be a great difficulty if not an impossibility in obtaining with the funds he could leave, within the area first designated, such a one as would be required, and therefore, in 1867, removed all restriction as to limits. He was very anxious to have the matter of site determined before his death, and desired me and others to ascertain the size and cost of vacant lots on Broad Street, on which street he particularly desired the building to be placed. I procured descriptions and prices of all I considered suitable, between Vine and South Streets, but he was satisfied with none of them. Another gentleman brought him a plan of the lot at Broad and Christian Streets, and he was so much pleased with it, that he instructed me to buy it, and I did so. The contract was signed on the eighteenth day of May, 1869, and the title papers were directed to be sent immediately to Mr. Henry Wharton for his opinion thereon. A few days after this, the Testator inquired whether I thought the Library Company would make any objection to the site, and I answered that from what I knew of the board, I believed they would not. He asked me to ascertain to a certainty their feelings on this subject, but not being willing that his testamentary intentions should be generally known, he only authorized me to communicate them to two of the managers, viz: Mr. Henry Wharton and Colonel Alexander Biddle, whose opinions I was requested to ask. I desired Colonel Biddle to accompany me to Mr. Wharton's office, and then stated to them that Dr. Rush had given almost his whole fortune, amounting to a million of dollars, to build a library at Broad and Christian Streets, and asked them if they thought the Library Company would object to that location. They declared that, considering the magnificence of the gift, the Library Company ought not, and they believed would not, make any objection to his wishes as to its position. Dr. Rush, to whom I immediately returned, was informed of the result of the interview—was greatly pleased, and having obtained the views of three members of the board, appeared entirely satisfied. Had he known that his wishes, thus



approved, would have been disregarded when he was gone, he would most unquestionably have embodied them in a form *legally* binding. It was after this, that the promise stated in my letter of thirtieth December, 1870, was made to him. This was given with a knowledge of almost every circumstance which led subsequently to my decision, when, as his executor, it became my duty to determine the site of the library. Knowing, as I do, that this promise is not binding upon *me*, the trustee in law, however it may be in morals and good faith upon the beneficiaries, I aver that I have never heard any reason assigned which would justify me in changing my opinion as to the propriety of this site. I have certainly seen none assigned in the bill which has been filed.

If there had been a conflict between my sworn duty under my oath as executor, and my promise to the testator, I could have ended it by a resignation of my executorship; but as no such conflict ever arose, it has never become necessary for me to determine what course, under such circumstances, it would be right for me to pursue.

I selected the Broad and Christian Street lot when I had assumed the executorship, after calm, careful, and deliberate consideration—having thought of it in every shape, favorable and unfavorable, in which it had been presented—because it was, in my judgment, the best I could obtain for the objects and purposes of Dr. Rush's will—and because it combined adequate dimensions with cheapness and position. I announced my selection at the meeting of shareholders of the Library Company on the twenty-ninth of June, 1869, and at the meeting held on the fifth of October, 1869, the resolutions, alleged to have been resolutions of acceptance, were adopted in face of the bitter opposition of a then minority (now in some mysterious way controlling the company) hostile to the selected site.

I was advised by my counsel in writing on the 9th of July, 1869:—

“As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument,

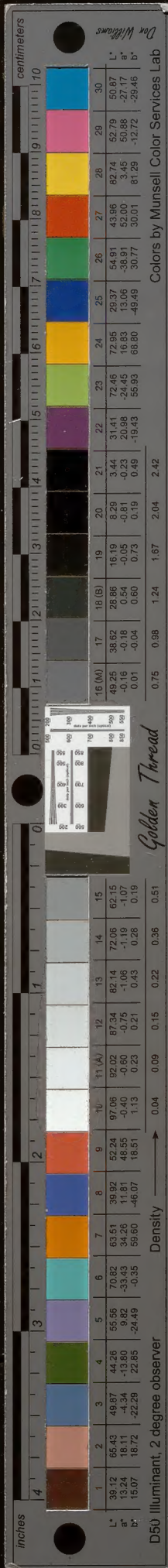
you may regard Dr. Rush's views and wishes orally expressed, but, after all, *your* judgment, however it may be made up, must be your guide in matters left to your discretion."

In pursuance of this advice—for I have felt, and still feel, under the obligation of my oath of office, bound to perform my duty in accordance with the *law*—I considered, in all its bearings, without any bias, the matter of the site, but my conviction that it was the one by far the most expedient remained, and still remains, unchanged.

Though protesting that the complainants have no concern with or control over my reasons for this decision so long as they are honest, which is not, I believe, denied, yet, in deference to the Court, I will state some of those which influenced me at the outset, and govern me still.

The lot I have selected is bounded by Broad and Thirteenth, Christian and Carpenter Streets. It has a front on Broad Street of 299 feet 5 inches; a depth along Carpenter and Christian Streets of 527 feet, and contains about $3\frac{1}{2}$ acres. It cost about \$132,000. It was Dr. Rush's desire that I should erect a building upon a general plan which he described to me. It was to be of the Greek Doric order—to consist of a centre building with two wings—the former to have eight, and each of the latter four, columns in front. The details were left entirely to me. This plan, the architect, Mr. A. Hutton, tells me, will require, according to the drafts prepared by him and approved by me, a front of at least 220 feet. All efforts in other libraries to give sufficient light from the roof alone having signally failed, as I have learned from personal examination and correspondence, an additional space of 50 or 60 feet will be required to give side lights, so that a lot of from 260 to 275 feet is absolutely necessary, in my judgment, for the building I am required to construct.

The testator's "cardinal intent" was, that a building should be erected by me sufficiently large to accommodate for all time the books of the Philadelphia Library, such as would be an ornament to the city, and a lasting monument to his wife and her father. Broad Street, in my opinion, is infinitely preferable



as a site for such a building, because of the handsome private and public structures already upon it, and of the probability of many more being erected there in the future; because of its length and centrality, and of its great width, which furnishes an opportunity for architectural display that our narrow streets fail to afford. In this preference my testator shared. A location of the library upon any other street in the city would be decidedly against my judgment.

From Vine to South Street it is almost entirely improved with buildings too costly to be paid for and then torn down. A prominent real estate agent whom I requested to obtain the prices of lots on this street, has furnished me a list of all the unimproved properties of any magnitude which he ascertained to be for sale, and the prices asked. By this it appears, that lots north of Vine Street from 150 to 200 feet in depth are held at about \$500 per foot, those between Race and Arch from 180 to 260 feet in depth at from \$900 to \$1000 per foot, and those south of Locust Street of a depth of 130 feet at about \$750 per foot; that the Asylum for the Deaf and Dumb at Pine Street, recommended as admirably suited for the library by some hostile to the site selected by me, which is but little more than one-third of a mile below, with a depth less by 130 feet than the latter, and a front of but 200 feet, is held at \$275,000. All these lots, with the exception of the last, are quite narrow.

I am informed that the lot owned by the Pennsylvania Railroad, having a front on Market Street of about 250 feet, and a depth on Thirteenth and Juniper Streets of about 353 feet, is held at from \$300,000 to \$350,000, and that for lots on Broad Street north of the Monument Cemetery with a depth of about 330 feet, \$425 per foot have been offered and refused.

The lot on Locust Street, recently purchased by the complainants, containing one-sixth the area of the selected lot, cost, as I am informed and believe, \$67,000.

I hope, under the estimates which have been furnished me, to finish the building with all its equipments, for \$650,000; but I will not depend upon a smaller expenditure than \$700,000. Though not admitting their correctness, saving for the purpose of the argument, I will accept the figures given by the

complainants in the 25th page of their bill, by which it will appear, that if I expend, as I would be compelled, an additional amount of \$140,000 in the purchase of a different site, I would have but \$550,000 left, and if required to set apart for their use, as they seem to demand, an additional sum of \$200,000, I could erect no fitting monument to the testator's wife and her father, and no building in accordance with my views or those which Dr. Rush has expressed to me. Neither the Company nor the Court can interfere with me in the selection of a site without cramping me in the matter of the building, over which I have a control that I believe has not been questioned.

The site which I have selected is within easy reach of all parts of the city. South of it is an immense population which is annually increasing, and, in the opinion of many—an opinion in which I join—this portion of Broad Street will ultimately be filled with magnificent residences. The facilities afforded by passenger railways are such, that to those north of it who may wish to use the library, a ride of a few squares additional will make no difference in cost and but little in time. The cars of the Tenth and Eleventh Streets line run within two squares, those of the Twelfth Street within one square, and those of the Thirteenth and Fifteenth Streets and Union lines along or around the lot. The latter also carry passengers without extra charge to the Navy Yard, Twenty-third Street, Fairmount, Richmond, and Kensington. It is equidistant with Buttonwood Street—in all less than four-fifths of a mile—from the street which is the very centre of the city, Chestnut Street, and below which a very large number of stockholders reside. It is nearer to Broad and Walnut Streets than is the present library building. It is but 930 yards south of the lot on Locust Street which complainants have recently bought, and distant from it, by car, five minutes, and by rapid walking six minutes. The city through which the 900 stockholders are scattered is sixty miles in circumference.

The great size of this lot will always protect the library from the noise and bustle of the more crowded portions of the city, and from all danger from fires or nuisances in its neighborhood.

Many of the libraries and museums of Europe are further



removed than it is from the residences of those who use them. In this country, wherever the plan of building in the centre of population has been followed, it has been found in a few years, from its shifting so frequently, that they have become so disadvantageously located as to make removal a matter of constantly recurring agitation. The Astor Library in New York, a comparatively modern institution, is now many miles distant from the mass of the reading public, and the Boston Public Library has been compelled to establish a branch quite distant from the original location, from which an entire removal is proposed.

I have chosen this site for these, among other reasons:—

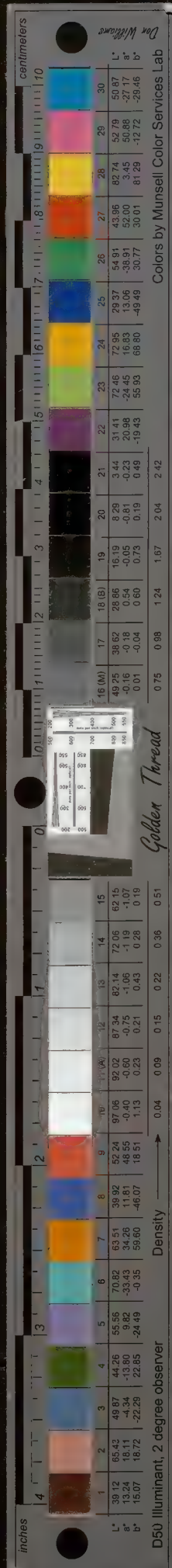
1. It is on the finest street of our city.
2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect, which I can obtain at a reasonable cost.
3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.
4. I know of no suitable lot on any other street which can be had at the same cost.
5. It is but little distant from the centre of the city, and is within easy reach, by car, of all portions of it.
6. It will not be necessary to have the library building torn down in twenty years and the lot sold because of its limited dimensions (Codicil, p. 25).
7. Its size insures, for all time light, air, retirement, quiet, and safety from external dangers.
8. It already belongs to the estate.
9. It is exactly suited for the kind of library Dr. Rush proposed to endow—not a reading-room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.
10. It will carry out the cardinal intent of the testator as *he* understood it, because it is the one he selected himself.

I adhere to this choice and to my determination to build thereon notwithstanding the opposition which has been raised, because it was to my judgment, and not to that of others, Dr. Rush confided the performance of his testamentary dispositions.

My judgment being at variance with that of others, I would lay myself open to charges which might be made in another bill, if I abandoned that which I have deliberately formed and announced. I may be wrong, and they may be right, and the testator might well have chosen many very much better fitted than myself to do the work imposed upon his executor, but *he* did not think so. We had been friends and connections from early manhood through lives so long protracted that almost all those whom he had known and trusted had gone. For twenty-five years I had been the trustee of himself and his wife. For upwards of half a century I had been his counsellor and adviser, and for these reasons he preferred me. Because I knew his *legally expressed* wishes, and intended, to the utmost of my ability, faithfully to execute them, I accepted the trusts he confided to me.

When I first met the managers of the Library Company, after Dr. Rush's death, I expressed to them my willingness to co-operate and consult with them in reference to any matters relating to his will. I also mentioned to them that Dr. Rush, a few days before his death, had made gifts of objects of art and convenience to several of his personal friends, which he caused me to write down in the presence of a witness. He did not add them to his will, because it was difficult for him to write his name lying on his bed; and because I assured him that I would assume any pecuniary responsibility that might be incurred, if the Library Company (although they had no legal power to consent) would only intimate their acquiescence, which I was confident they would do. (See letter to Dr. Willing, Exhibit B.) To neither of these suggestions did I receive any reply. The managers were entirely and studiously silent, and I was obliged, by the advice of my counsel, to forego the gratification of carrying out the last wishes of my dying friend.

Although the complainants do not deny that I have desired and intended to carry out the wishes of the testator, yet I have been met with dictation and resistance, direct and indirect, and a constant struggle to obtain the control of his estate; and he has been rewarded, certainly not with thanks, for on



the 5th day of October, 1869, by a majority of twenty-five, the complainants, in ordering the transmission of a copy of what they called their vote of acceptance, *voted down* a resolution "acknowledging the high appreciation by the company "of the confidence reposed in them by Doctor Rush, and of "their cordial willingness to unite in carrying out in the most "beneficial way his philanthropic intentions." Persistent efforts to evade and violate his directions have culminated in the "*prayer for relief*," from the plainly written directions and conditions of the will, to the benefits of which they most tenaciously cling,—a prayer which does not stop with the demand for an injunction against using a lot in favor of which I am said to be prejudiced, but which will, if granted under the pretence of carrying out the true (!) intent and purpose of the testator, not only prevent his chosen agent from building where he thinks "most expedient," but will confer upon an entire stranger, acting at the suggestion, and upon the inspiration of a company, [which, if their appreciation of the privations inflicted by the receipt of more than a million dollars grows much keener, must ultimately refuse it,] the right to say how much shall be paid for a lot, where it shall be located, the amount which must be expended in a building, and how it shall be constructed.

If it is not for the interest of complainants, as to which they alone can judge, to accept Dr. Rush's magnificent bequest in their favor, they are under no compulsion to do so, for he could not force them to see their interests as he saw them; but, if they do accept, it must be subject to the conditions imposed, viz., the exercise of my discretion as to location and construction, and the other directions of his will and codicils.

I would have been most happy to have shown to the Library Company all my plans, to have given to all their suggestions patient and careful attention and consideration, and to have deferred to their wishes where no duty prevented, had I been met with friendliness instead of with fault-finding, suspicion, and attack; but now, after all that has occurred, and the efforts which have been made to compel me to disregard my solemn oath, as an executor, to act in accordance with my judg-

ment, I decline to produce my plans, or to give any information concerning them upon demand in a hostile bill, particularly whilst the details, provisionally adopted, are still subject to alterations.

Since the filing of this bill I have consulted with the gentlemen who are named in the will as my successors—Alexander Biddle and Thomas Craven—and I have ascertained that they agree with me in the opinion that the site I have selected is the “most expedient” which could be chosen.

I will now, after having thus met generally the charges of the bill, answer in detail its specific allegations.

2. I am willing to admit all the facts charged in the first, second, third, and fourth paragraphs of the bill, saving that “the profits are *not* employed for the use and benefit of the shareholders.” I aver that, as stated in the third paragraph, the profits are so employed because used in the purchase of books which become their property.

3. I am advised, and therefore aver, that the complainants are not a corporation for *charitable* uses, as charged in the fifth paragraph, and that they are not as such entitled to the aid of a Court of Chancery for preserving and protecting their rights. The property of the corporation is owned by shareholders whose stock, representing a certain pecuniary value, is bought and sold in the market at varying prices. There is nothing in their charter to prevent them, by unanimous consent, from selling their property and dividing it amongst themselves. The public, who are permitted by a by-law merely to use the books in the library building under the control of the company, have only a revocable license, and not a right, to do so. A copy of the company’s rules, marked Exhibit C, is hereto annexed. The books belong to the stockholders, and the surplus revenue is used to increase their number and value. It is charged on the third page of the bill itself that the original purpose for which the corporation was created was the *collection and use of books by the SHAREHOLDERS at their houses as a circulating library*.—That purpose has not been changed.

In case of the company’s non-acceptance, the Ridgway



Library will be constructed as a "*Public*" library, and a great charity will then be inaugurated ; but Dr. Rush made no condition that the public should be admitted to the benefit of the bequests to the Library Company, and though allowing them to permit others to use their books for a pecuniary consideration, he expressly prohibited an increase of the number of shareholders.

4. I admit the truth of the statements in the sixth, seventh, eighth, ninth, tenth, and eleventh paragraphs of the bill, concerning the desire of the Library Company for a fire-proof building and the provisions of Dr. Rush's will ; but for greater certainty pray that the will itself may be referred to. (See Exhibit "A.") The purpose to erect it as a monument to his wife and her father, however, was, if not preliminary, at least cotemporaneous with, and not subsequent to, his design to provide such a building for the Library Company.

5. I admit, as charged in the twelfth paragraph, that "it is clear the testator expected and designed that the building he directed his executor to put up would be used if the Library Company were willing to accept the conditions imposed upon them as a place of deposit for their own books as well as those purchased with the funds provided by him." He gave such directions as will prevent for the present the accumulation of much income from his estate for the purchase of books, and he must, therefore, have expected that those of the Library Company would be placed therein. The building was "to accommodate and contain all the books of the Library Company of Philadelphia and to provide for its future extension." (Will, page 4.) When finished, it was to be conveyed "to the Library Company of Philadelphia and their successors and assigns, for the use and purposes of their library and for no other use or purpose whatever." (Will, page 5.) The surplus income was to be used (Will, page 7) "to pay all necessary salaries of the librarian and his assistants, and the expenses of binding and preserving the books of the *whole library*, making cheap catalogues, and all charges incident to its care and management. The said library is to be kept open from 9 o'clock A.M. until at or near sunset, except on Sundays and holidays."

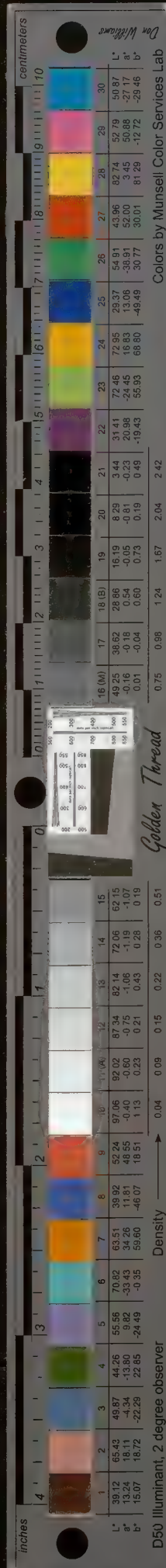
In his codicil of 1867 (Will, page 23) he repeats his intention that his executor should erect for the Library Company a building not only large enough to contain their present books, but also their probable increase for many years to come. He certainly intended that the building should be used in good faith for the deposit of their books by the Library Company. He provided for the construction of a "monument," and not of a vault. I am advised, and therefore aver, in agreement with the charges of the bill, that an acceptance of this building when erected by the Library Company will be upon the condition that it will be used in good faith, as such place of deposit for *all* their books.

I consider the averment in the second section of the 12th paragraph of the bill as immaterial, and admit it, if by "mode of user" is meant a use at the houses of the shareholders.

I deny the averments in the third section of said paragraph. I am advised, and therefore aver, that the complainants are not a charitable corporation, and that the discretion given me to select a site for the library building is not therefore in the nature of a trust for them; but that if the law and the facts are as stated in the bill, then as the will speaks as of the day of the testator's death, if, in his lifetime, by his own act, he disqualified me from the exercise of the discretion given to me by the will, the bequest to the Library Company being dependent upon the exercise of that discretion as a condition precedent to the vesting of the estate, no Court of Chancery can dispense with the performance of that condition.

I am advised, and therefore aver, that my disqualification to exercise my discretion, supposing it to exist, having arisen from acts of the testator himself, the complainants can take no benefits under his will conditioned upon a prior exercise of my discretion, however ready they may be to comply with all the "other conditions and regulations."

6. I admit the truth of the averments and charges in the 13th, 14th, 15th, 16th, 17th, 18th, and 19th paragraphs of the bill; but I deny that the act of Assembly and the amendments to their charter were, as stated in the 18th paragraph, sufficient to enable them "to effectually accept the provisions of the will, and conditions attached by the testator to his gift."



7. I do not know whether or not the averment in the 20th paragraph of the bill, viz.: that, in the general opinion both of the directors and shareholders, the site selected was an undesirable one, is true, though I am willing to admit that a large number of the stockholders and directors objected to it. I deny that it is undesirable as a site for a building which shall contain the books of the Library Company. I deny that it was believed by "all" to be very inconvenient for the purposes of the Company, and that it was believed by much the larger number that such a site "would be injurious, if not destructive, to the interests and future prospects of the company, as the remoteness of the location from the residences or places of resort of all the shareholders or persons accustomed to make use of the books, would probably prevent the library from being used for the purpose for which it had been founded and always maintained, and hence the income derived from contributions of shareholders, without which the institution could not be supported or continued, would cease." As "evidence" in support of this denial, I refer to the fact, that in February, 1869, the stock of the company, worth at par \$40 per share, sold for \$39, and that in May and November, 1869, after the selection of the site was well known, it sold for \$55 and \$59 per share.

As further "evidence" of this, I refer to the alleged acceptance of the building, after elaborate arguments against it, on account of the proposed site, had been printed and widely circulated.

As I am ignorant of the "usual places of resort of nearly all the stockholders," which, if material, I pray may be shown, I cannot say whether this site is or is not half a mile south of them.

8. As to the 21st paragraph of the bill, I am advised that a *minority* vote is not evidence of a "general" conviction. I have no possible means of knowing, and am aware of no way by which complainants can possibly know, and therefore deny, that the 256 votes cast in favor of the discarded resolution that "so much of the present collection of books and other property of the company as may by the directors be

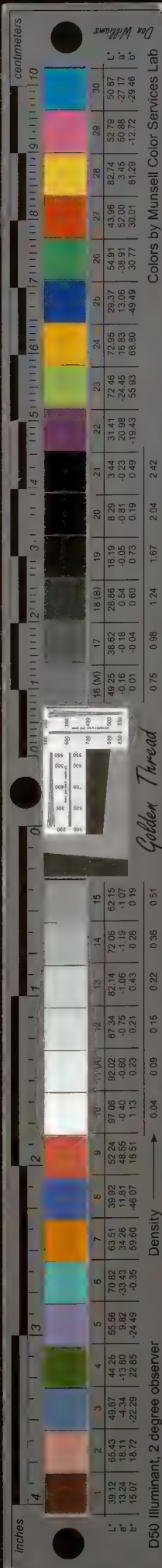
deemed expedient, shall be retained in the present or some other central position for general use and circulation," were part of the 298 votes cast in favor of the acceptance of the gift. I cannot understand the arithmetic—addition or subtraction, whichever it be—by which it is sought to make it appear, "that out of 591 votes cast, 549 were, in effect, cast against the removal of the collection of the library to that site," in view of the alleged fact that a majority voted for acceptance notwithstanding the site was well known.

9. As to the 22d paragraph, I deny that the complainants are "deeply impressed with the great advantages that might be derived from a proper use of the discretion given by the testator to his executor," or with any desire to avoid an "apparent violation of the cardinal intent of the testator," which was that I should erect "a proper building for the preservation and use of their library" in such a location as I deemed expedient. I deny, also, that they are "deeply impressed with the waste of money consequent on the erection of buildings so remote from each other for one common object," and, "as evidence," in support of this last denial, I aver that, since the meeting of October 5th, 1869, although a resolution looking to such an erection, because of the site selected, was then voted down, and one was adopted accepting the building, they have, without any reason for so doing, so far as I know, having been subsequently developed, contrary, as I am advised, to the spirit and meaning of the bequest in their favor, expended upwards of \$67,000 in the purchase of a lot 110 feet in front, at the northwest corner of Locust and Juniper Streets, with the intention, as I am informed and believe, of erecting a library building thereon.

If two buildings are to be erected, and two distinct establishments are to be maintained, the waste will be the voluntary act of the company, and not of the executor, and in direct opposition to the conditions of the will.

10. I admit the passage of a preamble and resolutions by the complainants, such as is charged in the 23d paragraph.

11. I deny that I have ever disqualified or disabled myself from exercising a discretion as to the site of the library build-



ing. I aver that in making selection of the site at Broad and Christian Streets, I acted under the direction of the testator as contained in his will, and in the proper and legal exercise of the discretion thereby given to me.

12. I deny the truth of the averments in the 25th paragraph, in the form in which they are put. I admit that I did, at his request, "not in the extremity of the testator's last illness," but whilst his intellect was as clear and strong as ever, within a month of his decease, promise him verbally, to use the said lot of ground at Broad and Christian Streets as the site of the library building; and I aver, that at the time I made said promise I thought it the best lot for the purpose which could be obtained; and I aver, that after careful reflection and subsequent examination, I still entertain this opinion. I deny that I ever made "a promise not to exercise any discretion at all" in reference to the site, or that any such words ever passed between Dr. Rush and myself.

I said nothing which deprived me of the full power to form a judgment or opinion in reference to the propriety or expediency of selecting that situation. A promise to do a particular act does not prevent the formation or the expression of an opinion in relation to its propriety or expediency, and I believe that I am just as able to determine whether the site at Broad and Christian Streets is proper or beneficial, as if I had made no promise at all. An agent or trustee acting under a specific power can, surely, although legally and morally bound to comply with it, decide whether the object of that power is right or wrong, beneficial or injurious, and whether or not, in his opinion, some other course would not be preferable, although he may not be permitted to follow it. So, here, I believe I can determine the question as to the eligibility of the site as correctly as if the subject had never been mentioned by Dr. Rush.

I am sworn to execute the provisions of the will. One of these requires me to exercise an honest discretion, and I believe I have done so. If, however, my discretion under my oath had been in opposition to my promise, then I would have been obliged to reflect upon the course I should pursue; but

as my oath—my opinion—that of the testator—and my promise all point to the same conclusion, I conceive my way to be clear and my discretion not to be subject to be limited or controlled.

When I gave my promise, I was fully acquainted with most of the facts upon which I have since, under the will, formed my opinion. I was aware of the power I would be called upon to exercise if I became the executor, and believed that, in the proper exercise of that discretion, I would be able to fulfil my promise.

13. I admit the truth of the averment in the twenty-sixth paragraph, as to my verbal announcement at a meeting of stockholders held on the 29th June, 1869, of my intention to place the library building on said lot. I also aver, that I then stated that, in my own judgment, this lot was well adapted for the purpose intended.

I am not aware that any arrangement was made to meet, by voluntary contributions, the loss which would or might ensue from a sale of the lot so purchased. I never heard any arrangement even suggested to make up the additional amount which would be required to purchase another lot.

14. I admit that I wrote to Dr. Willing on the 30th December, 1870, the letter from which an extract has been given in the twenty-seventh paragraph.

Its statements are true. Though the letter to which it was a response gave no intimation of such intention, it was written with a knowledge of threatened litigation.

I annex a full copy of this letter as Exhibit B.

15. I am willing to admit the soundness of the advice alleged to have been given complainants in the twenty-eighth paragraph of their bill, saving that I am advised a court of equity will not in all, or even in many cases, exercise a discretion which the donee of the power is disqualified from exercising.

I do not care to deny that "the verbal directions of the testator, varying the nature of the trust and confidence reposed by him in the defendant," "were as absolutely null and void (legally) as those of a stranger;" but I cannot admit that this would be the case if the directions were in writing, even



though they were made within "one calendar month prior to the death of the testator." I aver that by keeping my promise to Dr. Rush, I exercise the discretion he reposed in me in entire accord with my best judgment—exercised after the assumption of the trust, and upon full, careful, and deliberate examination.

I admit the truth of the allegations in the 3d section of said paragraph, that "a court of equity will not interfere with a trustee in the exercise of a discretionary power;" but I am advised and therefore aver that complainants are not a charity; and I deny that the testator, who supposed that their own income would be sufficient, mainly intended to "furnish them with books." I agree that it "was certainly designed," they should administer the bequest in connection with their own property, "under one management, in one building, and with one corps of servants and assistants;" and I suggest that complainants, if they believe they cannot, consistently with their own interests, accept and use Dr. Rush's bequest as he intended, can decline it. I am advised and therefore aver that no court of equity has ever, "where the donee has not surrendered and bound his discretion before the trust has vested in him, interfered to prevent its improper (in the sense of injudicious) exercise."

16. I do insist, as charged in the 30th paragraph, that I have selected the said site in the exercise of my *own* discretion, unbiased by any promise; and I deny that any promise, however it may be felt to be morally binding, did prevent or can prevent my exercising, or knowing that I have exercised, my judgment. I aver, that I am now able to say what line of conduct I would have followed if I had never made a promise, and that I would have selected the site at Broad and Christian Streets, if Dr. Rush had been silent as to his wishes.

17. I do aver, as alleged in the 31st paragraph, that I had a right to select voluntarily the same lot which the latter had selected, "none the less" because he had selected it; and I admit my infinite satisfaction at being able conscientiously, and in fulfilment of his *written* requests, made "more than one calendar month before his decease," to gratify his wishes

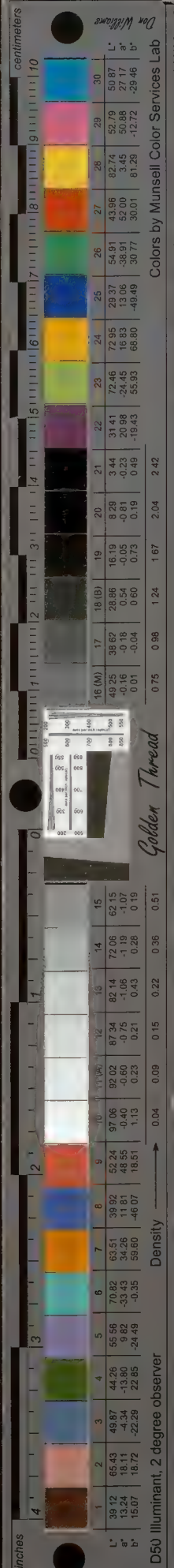
as to the manner in which his money should be expended. The "excuses" in that paragraph charged to have been given by me, I have no recollection of having ever made.

18. I deny that "my determination or selection of the said lot at the southeast corner of Broad and Christian Streets, as a site for the building to be erected under the trusts in the will contained, is wholly" (or partially) "nugatory, void, and ineffective," as charged in the 32d paragraph of the bill. I am advised and therefore aver, that an alteration in a will withdrawing some of the powers conferred for the benefit of any corporation, "if otherwise made in the most lawful and binding manner," would not be wholly void and of no effect, by reason of having been made within one calendar month prior to the testator's death.

19. I demur as to the materiality, and deny the correctness, of the charge in the 33d paragraph, that the site selected is "utterly ruinous and destructive of the general purposes for which the complainants were incorporated;" and as "evidence" of this, again refer to the action of the majority of the complainants, who would never have brought down this ruin upon themselves by accepting the bequest that occasioned it; and to the acts of those of them who, in November, 1869, voluntarily paid \$20 more for each share, though it had been thus ruined, than they were ever before willing to give.

I deny that the selection of this site "compels an election (by complainants) not authorized by the will," or that it compels them "either to place their collection of books where "it will be utterly or comparatively useless to their shareholders, or else lose the benefit of the inestimable gift of the "testator to them of a building to contain their books and "property."

The *will* not only authorizes, but *compels* the complainants to elect whether they will accept the building upon the site I select or not, and this, though the site be, what I deny most emphatically, utterly unfit for the purposes of their library, and though it might be more advantageous to them to dispense with this election, and to use the money in the way *they* think most to their interest.



I deny that my selection is disadvantageous to the object proposed by the testator, or to anything "which it was the manifest design of the testator to promote." Whilst nothing *in the will* justifies the complainants' assertion, his well-considered acts in selecting the site at Broad and Christian Streets, and his solemn injunctions to adhere to it, even if not registered in a form legally binding, shed such light upon his "cardinal intent," as understood by himself, as to render it absurd to allege that it will be defeated by my selection of the very site he so decidedly preferred.

I deny and condemn as utterly subversive of sound morals and testamentary right, as utterly unfounded in law, and monstrous as ground for equitable relief, the doctrine, that even if my "selection of the site were made, under an unbiased discretion," because, "contrary to their (complainants') wishes," and thought by them to be "injurious to his intended beneficiaries," this court would or could "interfere and control the defendant in regard to the selection of a site."

Though the complainants, after a thorough discussion, in a largely attended meeting, held specially on the 5th October, 1869, refused to authorize a separation of their collection of books, I admit the truth of the charge, that by their subsequent acceptance of the act of Assembly, and the amendments to their charter, they made a distinct election "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site on Broad Street." This inference is clearly established by the clause in the said act authorizing them to act as trustees, "only in such manner that the real and personal property of the company, including such books, pictures, statues, and other works of literature and art as now are or hereafter shall be held by them in their own right or on any other or different trusts, shall be in no wise affected hereby, but shall remain and be under their entire and exclusive control and disposition," which means, that, in accepting Dr. Rush's bequest, whatever site be selected, they shall not, and cannot, deprive themselves of the right to put their books there or elsewhere, at their uncontrolled pleasure.

21. I deny the correctness of the charge in the thirty-fourth paragraph, that the "selection of the said site will not only be destructive of their own interests, as aforesaid, but will also frustrate the main intent of the testator," and I dispute the relevancy, as proof, of the remaining allegations in said paragraph.

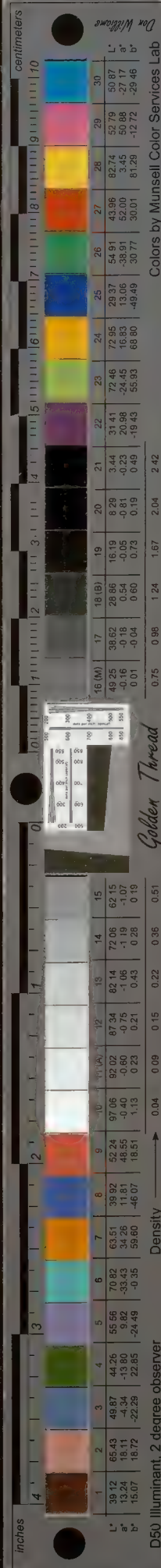
The vice of the argumentative averments in said paragraph lies in their assumption of what has not been shown, viz., the necessity for the erection of two buildings, and of their right, after receiving a conveyance of the building, to use another as a permanent depository for their collection of books. If they do not intend to occupy it for "the uses and purposes of their library," good faith should dictate a non-acceptance.

Though it is not necessary to discuss the practicability of an experiment which they have no warrant or power to try, viz., whether their income will be sufficient to maintain two establishments, I feel very confident that they will be in the receipt of a much larger one than they allege.

In addition to that admitted, viz:—	\$8,884 47
They will have the interest upon the proceeds of the sale of their present building, at a moderate estimate, \$100,000	6,000 00
Upon the annuity fund, eventually, say	12,000 00
And, most probably, upon \$100,000, which I hope to save by accumulations	6,000 00
	<hr/>
	\$32,844 47

Besides this large income, the complainants admit (Bill, p. 4) that they have a building fund of \$90,000, which will provide ample means for all improvements or additions, whenever they may be required.

They have no right to control my honest expenditure in the erection, even though it exceed \$700,000. In carrying out testator's plans and my own views of what is requisite, I will be justified in spending the whole estate excepting the annuity fund. (Will, p. 24.) If necessary, I will do so; but I do not intend to pay for the work he has directed to be done,



any more than will be absolutely necessary. The Library Company will receive the benefit of all that is saved.

If compelled to buy another lot, sufficiently large, within the limits approved by complainants, I can hope to save nothing, and will be compelled to delay building for many years.

22. I deny that the intended site for the library will have the effect of preventing "the increase of the number of persons resorting to it," and thus prevent "the increase of its income," whereby "a large revenue" will be afforded "for the increase of the collection." But even if the site should have this effect, it will not frustrate the main intent of the testator, "who had observed large annual incomes in corporate bodies almost invariably lead to wasteful extravagance, and cause the institutions to be the prey of schemers," and who, therefore, determined to restrict that of the complainants. I deny that the "cardinal intent," or even the secondary intent, of the testator was to provide an income for the complainants, or to do more than secure for them a splendid building erected upon such site and in such manner as I should think "most expedient." He restricted their income to that ultimately to be derived from the annuity fund. The possibility of losing shareholders by an acceptance, will weigh with complainants when deciding that question, but cannot be assigned as a valid reason for asking a court of equity to annul Dr. Rush's will. I feel justified, however, in quieting the apprehensions of complainants that such of them as have recently bought stock at an advance of \$20, will forfeit it for non-payment of dues and thus diminish their income.

23. I am advised and therefore aver, that it is not the duty of the complainants, and that they have no right to apply for relief to this court. I therefore demur to so much of the bill as charges such right and duty, and to the whole of the relief prayed for, and assign the following grounds for such demurrer:—

I. There has been as yet no valid acceptance of the bequests of the will. There can be no binding agreement to accept them until after the entire completion of the building. Dr.

Rush gives no estate to complainants until after such completion. The alleged acceptance of the fifth of October, 1869, is not binding upon them or their successors, but is a simple expression of willingness to receive a gift, and is revocable until receipt of a conveyance.

II. None of the preliminary conditions prescribed by testator have been complied with.

a. No binding agreement to comply with these has ever been executed and delivered. This is made a condition precedent to the vesting of any estate or right.

b. The clauses (see p. 3, of this answer) which the testator ordered to be inserted in an act of Assembly, have not been inserted in the one drafted by the counsel of the company, nor in any other.

c. The act of Assembly drafted by complainants virtually prohibits them from acting as trustees under Dr. Rush's will, because it enacts that their property, books, &c., shall not be subject to the conditions of that will, but shall remain entirely under their own absolute control.

d. The order of Court by which they have sought to dispense with what the testator prescribed, is in direct opposition to the act of Assembly by which it is pretended to have been authorized. The act permitted the company to act as trustees "only in such manner that the real and personal property of the company held by them in their own right" should be in no wise affected by Dr. Rush's will and codicils, "but should remain and be under their own entire and exclusive control and disposition." The order of Court attempts to interfere with this control and disposition, by saying who shall act as directors, and the number of stockholders who shall use it, and by forbidding a connection with any other body corporate or politic. It is therefore utterly null.

e. The reservation of an exclusive control in the Library Company over their books, &c., is in opposition to the condition imposed by testator, that there must be no non-exclusion of books differing from "ordinary or conventional opinions."

f. The reservation of this control will prevent the complainants from binding themselves to use the building for the purposes of their library, and as a receptacle for their books



Without a compliance with these conditions, there can never be any conveyance or delivery.

g. The order only provides that "*so long*" as the Library Company shall act as such trustees, they shall do so under the conditions imposed by Dr. Rush's will; but, I am advised that I have a right to insist that upon conveyance and delivery of the building they must bind themselves to a perpetual subjection to those limitations, as the consideration to be given for Dr. Rush's magnificent present.

III. The alleged acceptance has been withdrawn. By their acceptance on the twenty-fifth of May, 1870, of the said act of Assembly, the complainants distinctly elected, as they allege, "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site," and this election, so far as appears from the averments in their bill, was made in the belief that I was acting in entire accordance with the directions of the will, for they aver no knowledge until the receipt of my letter of the thirtieth of December, 1870, of my having made any, supposed to be disqualifying, promise. The purchase, in January, 1870, of the lot at Locust and Juniper Streets, with a view to erecting a library building thereon, in direct opposition to the provisions of the will, was also, it is charged, a withdrawal of their former acceptance.

IV. The complainants are not a charitable corporation, nor within the protection afforded to charities by courts of chancery.

V. The interference by the Court in favor of a *private* corporation, such as the complainants are, will be in prejudice of a great charity for the benefit of the *Public*, which "the Ridgway Library" will be, if endowed under the provisions of Dr. Rush's will, in the event of the refusal or omission of the complainants to accept the devises in their favor.

VI. The Court has no jurisdiction to control my discretion in the selection of a site for the building, nor in the execution of any of the trusts of the will.

24. I pray that I may, under the provisions of the rule of

Court in such cases made and provided, be permitted to avail myself of all matters of defence in law, or to the merits of the bill, in my above answer stated, of which I might have availed myself by demurrer, or plea in bar, with the same force and effect as though I had filed a separate demurrer or demurrers, plea or pleas in bar.

25. I pray to be hence dismissed with my reasonable costs and charges in this behalf most wrongfully and needlessly sustained.

HENRY J. WILLIAMS.

JOHN G. JOHNSON,
GEORGE JUNKIN,
GEORGE W. WOODWARD,
Solicitors for Defendants.

CITY OF PHILADELPHIA, ss.

Henry J. Williams, being duly sworn, deposes and says that the facts in the above answer stated as of my own knowledge are true, and that those stated upon the information of others are true to the best of his knowledge and belief, and that the above demurrer is not interposed for purposes of delay.

HENRY J. WILLIAMS.

Sworn to and subscribed before me this sixth day of July, 1871.

SAMUEL C. OGLE,
Not. Public.

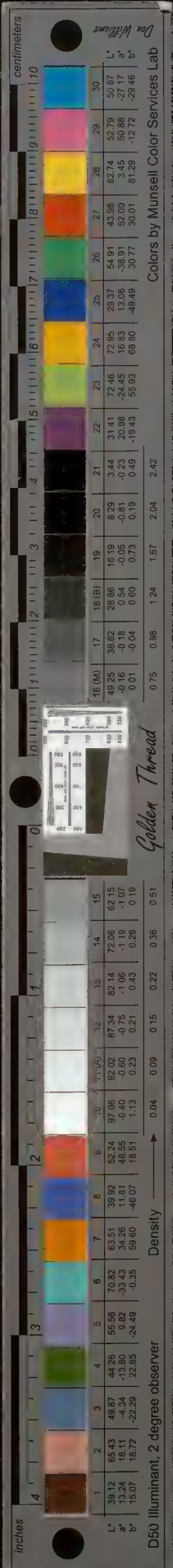


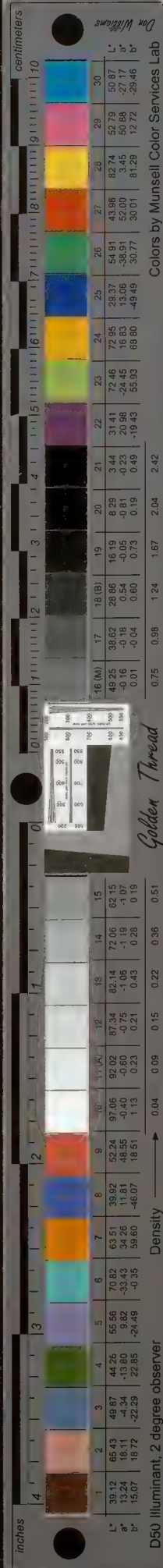


EXHIBIT B.

CHESTNUT HILL, Dec. 30th, 1870.

MY DEAR DOCTOR: I did not intend my note of the 17th instant to be a formal reply to the resolutions of the directors of the Library Company, nor to prevent the committee from having the conference they requested. So far from it, that I mentioned both time and place at which I would have been happy to meet them. I cannot, however, conceal my conviction, that nothing they could say would change my intention of placing the Ridgway branch of the Philadelphia Library on the lot purchased by Dr. Rush for its site; and after all that has taken place, I must confess I am a little surprised that they should again ask me to do so. Judge Hare and yourself must both be fully aware (for I have stated them, I believe, both orally and in writing) of the circumstances connected with the selection of that lot for this purpose; but, as Mr. Lea, one of your committee, is a new member, I shall repeat them, even at the risk of being unnecessarily tedious in my answer; for I cannot believe the directors could expect *me* to make the change they desire, if they fully appreciated my position.

Some weeks before Dr. Rush's death he was very anxious to have the location of the intended building finally fixed and settled; and he desired me to ascertain the size and cost of all the vacant lots on Broad Street, on which street he desired it to be placed. I procured statements of the sizes and prices of all I thought at all suitable, from Vine to South Street, but he was satisfied with none of them. Another gentleman brought him a plan of the lot on Christian Street, and he was so much pleased with it that he directed me to buy it at once. I did so; and when the contract was signed and a part of the consideration paid, he expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. Some days after, he recurred again to this subject, as it had probably occurred to him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might



be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would *build the library on that lot and nowhere else*. I gave him this promise as fully and solemnly as language could express it, and he then thanked me and said he could now die in peace. Now, do you think it would be at all consistent with truth and honesty for me voluntarily to violate a pledge given under circumstances which render it as sacred as an oath, and made to a dying man who had confided to me the management of his whole estate? Would you, with your well-known delicacy and sensibility to all honorable engagements, feel yourself justified in doing so, were the case your own, and should I not lose your respect and regard (which I value very highly) were I to hesitate for a moment as to what was my duty?

And what is the reason assigned why I should do this?—"to gratify the wishes of the shareholders." But have these shareholders shown such an appreciation of the magnificent gift of Dr. Rush (which is only subject to their future acceptance) as to render his representative very desirous to comply with their wishes, in opposition to the repeatedly and earnestly declared intentions of Dr. Rush, and to his own deliberate judgment? When the question was first presented to them, these shareholders, by a majority of five, accepted his bequest, but, by a very much larger majority, refused to pass a resolution expressing their gratitude for his gift. True, at a subsequent meeting they adopted such a resolution, but it was only on second thoughts; and it may be doubted whether it was not agreed to because of the extraordinary position in which they would be placed, if they were to take his money and refuse to admit they were obliged to him.

I have said that to assent to the wishes of the shareholders would be in opposition to my own deliberate judgment, and I mean this in its fullest extent. I think that, considering its size, its price, and the description of library Dr. Rush intended to endow, there is not an attainable position on Broad Street, of sufficient size to meet his views, which is preferable to the one he has himself selected.

There is one other matter to which I refer rather unwillingly, but as I shall not probably have any further commu-

nication with the directors on this subject, I have determined to mention it.

During the three or four weeks previous to Dr. Rush's death, he desired me on various occasions to make pencil memoranda of several articles which he directed me to give to his friends as remembrances. I reduced these memoranda to form; wrote them in ink, and read them over to him in presence of Miss Little, a friend who was constantly with him. They were not signed because his physical weakness rendered his writing a labor, and he did not wish his tremulous signatures to be attached to his will. I said to him, no one could object to them but the Library Company, and if they gave their assent, however informally, I would assume the pecuniary responsibility and carry out his instructions. I mentioned all these facts to the directors, at one of the only two meetings I have attended since Dr. Rush's death, and stated the value of those articles would not exceed \$2000—and several were intended for me, but I declined to take any of them, and spoke only for the sake of others.

No notice was taken of this request, and after waiting many months I consulted my counsel whether I might not consider these memoranda as part of Dr. Rush's will and carry them into effect.

They both advised me strongly against it, and I was obliged to inform the intended beneficiaries, that for want of the assent of the Library Company, they could not have their remembrances.

Now, the Library Company give me notice that the company "are now ready to undertake the performance of their duties as trustees for the Ridgway branch of the Library,"—*duties* and *trusts* which I understand commence only when the building is finished; but I am not aware that they have shown, in any one instance, a disposition to comply with the last instructions of one whom I shall always consider as their munificent benefactor.

Very truly yours,
H. J. WILLIAMS.

DR. CH. WILLING,
Chairman.

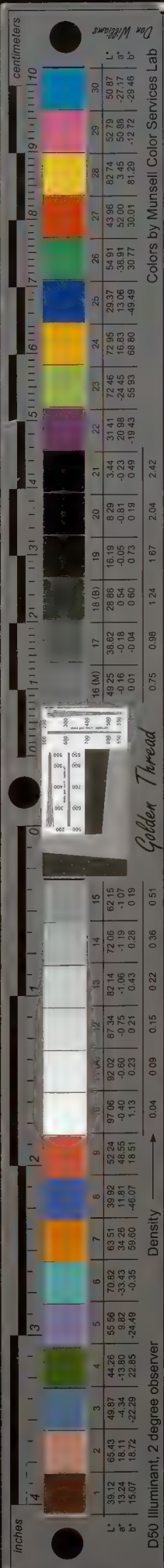


EXHIBIT C.

Rules to be Observed by the Library Company of Philadelphia.

I. THE Librarian shall attend at the Library, every day (Sundays excepted) from the first day of April until the first day of October, from two o'clock P.M. until sunset, and from the first day of October until the first day of April, from one o'clock P.M. until sunset. He shall enter in the catalogue, kept at the Library, such books as may be purchased or added to the Library, label and number the same, as well as all others from which the label or number may be torn off or defaced. He shall also replace the books on the shelves, as they are brought in, as soon as he conveniently can, first having examined whether they are free from damage.

II. He shall lend to any member,

One Folio for five	} Weeks,
One Quarto for three	
One Octavo, or	
Two Duodecimos, for two	

and no greater number, unless on hire, or so connected as to be otherwise useless. Such persons, however, who reside at the distance of seven miles or upwards, are permitted to have books one week longer than the above-mentioned times. For all books so lent he shall take a note, payable to the Company, for double the value, as high as he can estimate, of the book or set of books to which they belong, conditioned to return the same, undefaced, within the time above mentioned; at the expiration of which (unless application has been made by another member for the same books, and the Librarian requested to take a memorandum thereof), the borrower may, on producing the book to the Librarian, renew his note for the like time.

III. Every person, not being a member, who shall hire a book, &c., shall first give a note for double the value thereof, in the same manner, and be subject to the same regulations, as a member; and shall also deposit, as security, in the hands of the Librarian, double the value of such book or books; but if the book or books should belong to a set, then such person shall deposit treble the value of the volume or volumes which he shall so take out.

IV. Every member, or other person, who shall take out a book or books on hire, shall pay, for the use of the Library, the following rates, weekly: For Duodecimos and Octavos, two-sixteenths of a dollar; Quartos, three-sixteenths of a dollar; and Folios, four-sixteenths of a dollar; and no smaller sum, although the book may be returned within the week.

V. Every member, or other person, who shall neglect to return the book or books within the time specified in the second rule, shall, for such neglect, pay to the Librarian, for the use of the Library (besides the hire, where the book is not taken out by virtue of a share), two-sixteenths of a dollar per week; and if not returned, undefaced, within one month from the expiration of the time limited in the note, the fines and hire accruing thereupon shall be doubled; and if not so returned within three months from the same period, the note or deposit money shall be forfeited to the Company.

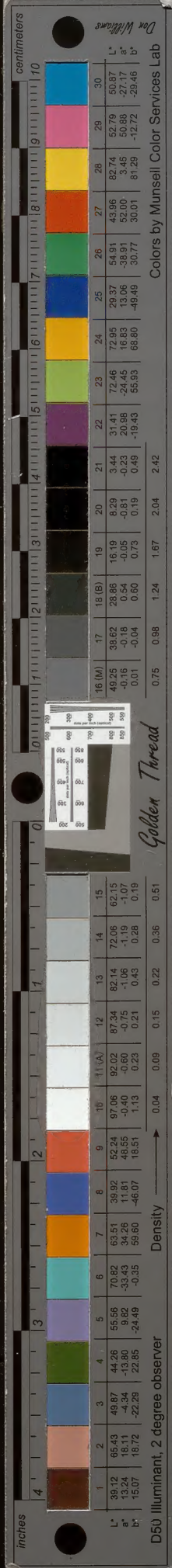
VI. Books returned are to be delivered into the hands of the Librarian, to be examined whether damaged or not.

VII. No person from whom any hire or forfeiture is due, or who hath damaged any book, shall be permitted to have another book till satisfaction be made.

VIII. If a member, and one who is not a member, should apply for the same book at the same time, the member shall have the preference.

IX. A member may take out on hire, without a deposit, as many books in value for which his share in the Library shall, by the Librarian, be deemed a sufficient security, on the same terms, in other respects, as persons who are not members.

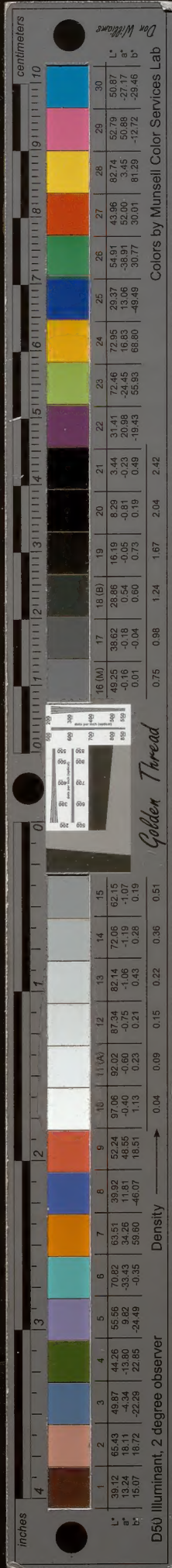
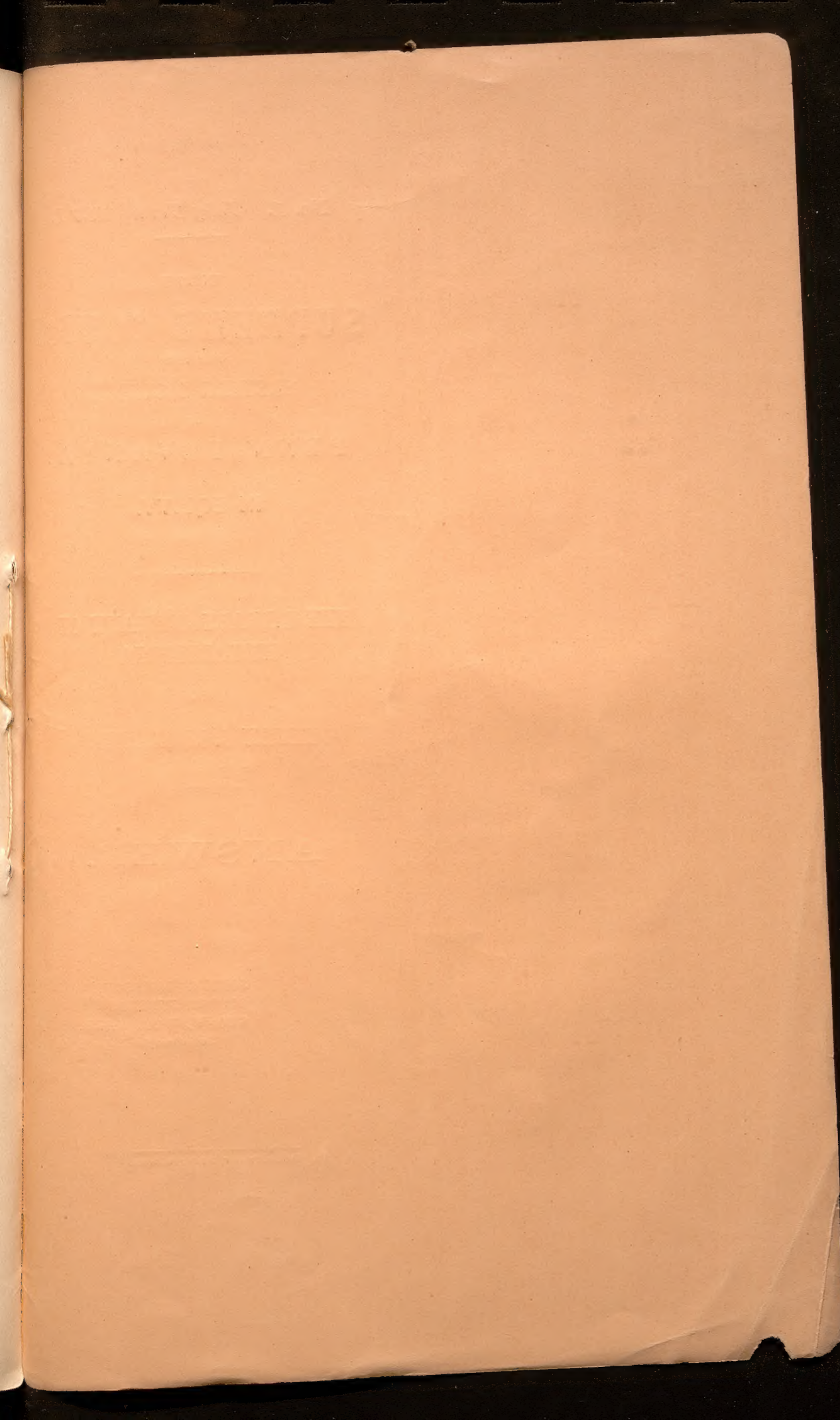
X. The Librarian shall furnish the Directors, at each monthly meeting, with an account of the fines and forfeitures which have accrued during the preceding month.



XI. The Librarian is to conform to the instructions of the Directors with regard to such books as, from their scarcity and value, are to be let out only on certain conditions, or not at all.

XII. No person, whether a member or not, is to lend the book or books he borrows to any person out of his dwelling-house.

XIII. No book shall be lent on the share of a deceased member, unless the note be signed by all the executors or administrators of such deceased member, or by some one of them, appointed and authorized by written orders of the others.



IN THE
SUPREME COURT
FOR THE
EASTERN DISTRICT
OF
PENNSYLVANIA.
IN EQUITY.

vs.

ANSWER.

Collins, Printer, 705 Jayne Street.

